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April 7, 2003

Albert J. Genetti, Director
Department of Public Works and Transportation
101 Monroe Street, 10th Floor
Rockville, Maryland 20850

RE: Authority of DPWT to Use Police Towing Regulations to Move Private Vehicles from Roadway; Authority of DPWT to Operate Roadside Assistance Program; and Authority of County to Remove Disabled Vehicles and Road Hazards from State or Municipal Highways or Streets

Dear Mr. Genetti:

QUESTIONS

You have asked us to respond to these questions: (1) Does Executive Regulation 9-97 authorize the Department of Public Works and Transportation (DPWT) to remove a private vehicle from a roadway in the County? (2) Can DPWT legally operate a service patrol program (roadside assistance) similar to the one operated by the Maryland State Highway Administration, ("MSHA"), or would legislation and/or executive regulation be required to authorize such a program?; and (3) May the County operate a service patrol (roadside assistance) program on MSHA roads (most of the arterial highways in Montgomery County are MSHA maintained) and streets within municipalities?

SHORT ANSWER

In our opinion, the Police Towing Regulations (Executive Regulation 9-97) do not allow DPWT to tow vehicles; however, an Executive Order can provide DPWT sufficient authority to operate a service patrol (roadside assistance) program on roads subject to County legislative power. Finally, we believe DPWT must gain consent from the State to tow private vehicles from State highways and gain consent from the municipality before towing vehicles from roads within its geographic jurisdiction.

BACKGROUND

In your request for an opinion, you describe a program envisioned as part of the County Executive's "Go Montgomery" initiative that would provide arterial service patrols (tow trucks)

that would be used to reopen travel lanes blocked by accidents or disabled vehicles¹. You indicate that this program would involve contracting with private tow companies to provide tow trucks and drivers at County expense² to patrol the road and, if necessary, to move damaged or disabled vehicles off the road to a safe location³. From this safe location, the vehicle owner must make arrangements for a tow to a final destination.

You have included for our review a draft of the proposal entitled "Quick Response Team Concept: Incident Clearance and Stranded Motorist Assistance"; a copy of "Review of Existing Safety Patrol Operations in Other States"; a copy of Executive Regulation 9-97, "Tow Truck Rules and Regulations"; and a copy of an Interagency Agreement between the Maryland State Police and the State Highway Administration regarding removal of vehicles from roadways.

DISCUSSION

A. Executive Regulation 9-97 Does Not Grant DPWT The Right to Remove Private Vehicles from the Roadway.

Executive Regulation 9-97, "Tow Truck Rules and Regulations," was approved by the County Council in 1997.⁴ That regulation governs the police department's use of tow truck companies and regulates some of the tow truck companies' operations. It establishes the framework under which private tow companies may apply for inclusion on a list of approved tow truck companies for selection whenever the Montgomery County Department of Police ("Police Department") requires tow truck services. It contains an extensive definitions section which, among other things, defines a "police tow":

A Police tow is constituted when a Police Officer requests a tow truck and directs the tow without intervening consent by the vehicle's owner/operator/agent. The service provided by the tow company may cease to be a Police tow when the

¹We suggest the County place signs on roads where this program will be implemented that give notice that vehicles stopping, standing or parking during certain hours will be towed.

²We suggest consideration be given to recovering the costs of the tows from the owners.

³"Safe" is a relative term. This opinion does not address the potential liability the County may be assuming under the proposal; however, we suggest the Risk Manager should be consulted before you implement the program to appropriately reserve for the risks associated with the program and to develop procedures designed to minimize that risk.

⁴Section 2A-14 authorizes an agency to adopt regulations to implement or enforce a law that authorizes that agency to implement or enforce that law.

operator/owner/agent requests the vehicle be towed under a private arrangement with the tower and signs an informed consent form. Vehicles involved in serious or fatal personal injury accidents are subject to mandatory police tow. These vehicles are considered evidential and will only be released by law enforcement officers. As a rule, these vehicles should be towed to the Abandoned Vehicle Section immediately or on the next available date.

Executive Regulation 9-97, §2(K)

Further, Executive Regulation 9-97 sets out duties and responsibilities of tow companies, including a specific prohibition against responding to a police tow unless requested to do so by a representative of the Police Department or the owner/operator/agent of the vehicle being towed. *Id.*, at §3(A)(1). Additionally, the Regulation prohibits roving patrols: "All tow companies arriving at or reporting to an accident scene prior to the arrival of a Montgomery County Police Officer will not solicit any party involved to tow their vehicle." *Id.*, §3(A)(12). Further, the Regulation provides that "[t]owing companies will call the Montgomery County Department of Police prior to towing any vehicles involved in an accident to verify if the accident has been reported (or, if not, to report it), especially when the request to tow any vehicle involved in an accident was made through the owner/operator/agent of any damaged vehicle." *Id.*, §3(A)(14).

Executive Regulation 9-97 also contains administrative provisions such as establishing maximum rates for towing services (§4), method of payment (§5), where and how long vehicles may be stored by the tower (§6), the requirement to maintain towing logs (§7), how companies can apply to be included on the Police Department's towing list (§8), how companies are selected from that list (§9), and disciplinary procedures (§10).

Executive Regulation 9-97 therefore expresses a specific legislative purpose of providing a rational, reasonable, and manageable program whereby the Police Department is able to meet its obligations to maintain and manage traffic flow. While it thoroughly addresses and meets the needs of the Police Department, it doesn't appear adaptable for the type of towing proposed by the roadside assistance program, because, in part, Executive Regulation 9-97 does not authorize agencies other than the Police Department, such as DPWT, to move private vehicles from a roadway. More precisely, the regulation does not authorize the police to tow vehicles, but governs the exercise of their authority. The authority to tow vehicles, as envisioned by Executive Regulation 9-97, derives from §31-9(a), *infra.*, of the County Code and the common law authority of a police officer to direct traffic and to investigate crime. For example, a police officer may seize a vehicle as evidence for investigative purposes to follow-up on the investigation of a traffic accident (as in the case of fatal accidents) and may remove vehicles from the highway when they are disabled and are impeding traffic as an exercise of the common law

power of a peace officer. Thus, for DPWT to exercise powers similar to those of the police, legislation must exist delegating those powers to it.

B. The County May Operate the Service Patrol (Roadside Assistance) Program on County Roads, and Subject to Their Consent, on State and Municipal Highways.

We will separately discuss the authority to remove disabled vehicles and road hazards from county, State and local roads below.

1. County Roads

The County laws that directly relate to impounding and towing vehicles from roads in the County are consistent with supplemental authority granted to Montgomery County by the Maryland General Assembly to regulate parking, stopping and standing on public roads. Section 26-301(b) of the Transportation Code Annotated, provides, in part, that “any political subdivision of this State may adopt ordinances or regulations that (1) regulate the parking of vehicles; (2) *provide for the impounding of vehicles parked in violation of the ordinances or regulations*; (3) regulate the towing of vehicles from publicly owned and privately owned parking lots; and (4) provide for the issuance of a citation by an officer for a violation of an ordinance or regulation that is adopted under this section.”⁵ (Emphasis added).

Consistent with that authority, §31-8 of the County Code, for example, regulates parking and contains a general prohibition against stopping, standing, or parking on any road, highway, alley or public parking facility of the county *so as to impede the movement of traffic or constitute a threat to public safety*. Section 31-9 of the Code concurrently provides for the impoundment of such vehicles and states, in part, that “[a]ny vehicle . . . otherwise parked so as to constitute a definite hazard to public safety or is so parked, stopped or standing so as to impede or obstruct the normal movement of traffic or pedestrians, *may be impounded by members of the department of police or other authorized persons designated by the county executive*.” (Emphasis added).

It is clear that the phrase, “other authorized persons designated by the county executive” contemplates that persons, other than police officers, such as DPWT employees, may be authorized to remove disabled vehicles from county roads. And, upon proper designation,

⁵The County Council has adopted ordinances that (1) regulate parking—*see generally*, County Code, Chapter 31; (2) provide for impounding of illegally parked vehicles—*Id.*, §§31-9, 31-21, 31-31; (3) regulate towing from public and private parking lots—*Id.*, §§31-46 and 31-62; and (4) provide for issuance of a citation—*Id.*, §§31-53 and 31-54.

contract tow truck operators could impound vehicles that impede the traffic flow.⁶

Therefore, the County Executive, through a properly executed Executive Order, may authorize DPWT employees, acting themselves or through contractors (tow truck operators) to remove and impound vehicles that are parked, stopped or standing and impeding the normal flow of traffic on County roads. *See*, Montgomery Co. Code, §2A-17

2. State Roads

We believe that the Maryland Vehicle Law, i.e. the Transportation Code, controls our review. And, we begin that review with the principle that the law provides that the State of Maryland is responsible, among other things, for (1) maintenance of State-owned highways, Md. Code Ann. [Transportation] §8-601; (2) removal of brush, snow, animal carcasses and other debris from all State highways, *Id*, §8-602; (3) landscaping, *Id*, §8-603; (4) naming highways, *Id*, §8-604; and (5) placement of signs, signals and markers, *Id*, §8-605. We can find no source in law that provides that the State is exclusively responsible for removing disabled vehicles and road hazards from State roads.

We can find some distinction in law, though, between a "State" road or a "county" road. Most references that we have found, however, deal with maintenance and placement of signs and have nothing to do with reopening a blocked roadway.⁷ We also recognize that with respect to **law enforcement authority and responsibility**, the Maryland vehicle law applies equally on nearly all roads in the State, regardless of ownership. For example, Md. Code Ann. [Transportation] §25-101.1 provides that the provisions of the State's vehicle laws are Statewide in application. *Id*. The law further provides that those laws are also applicable on private property used by the public in general. *Id*, 21-101.1. No distinction is drawn between State, county, or municipal controlled highways for purposes of enforcement of the vehicle laws.⁸ For this reason, the law empowers local police officers to act to enforce the law whether on State, county or municipal controlled highways.

⁶We envision that the tow truck operator would offer to move the vehicle to the nearest safe place but if the vehicle operator refused that the tow truck operator, in the capacity of a parking enforcement officer, would impound the disabled vehicle for the time necessary to move it to a place so as not to impede traffic.

⁷For example, there is a provision in the Transportation Article that provides that the State Highway Administration is responsible for placing traffic control devices on State highways, but a local jurisdiction may place a traffic control device on a State controlled highway with the permission of the State Highway Administration. Md. Code Ann.[Transportation] §25-105. A local jurisdiction is permitted to place traffic control devices on County controlled roadways. *Id*, §25-106.

⁸*See also, Mayor and City Council of Baltimore v. Foster and Kleiser*, 46 Md.App. 163, 166 (1980)(Term "highway" includes any public street or road).

We noted above that among the specific powers granted to local jurisdictions, “in the reasonable exercise of its police powers” is the power to regulate or prohibit stopping, standing or parking of vehicles as to highways under its jurisdiction. *Id.*, §25-102(a)(1). Although, Md. Code Ann. [Transportation] §26-301, authorizes the County to adopt ordinances that provide for the impoundment of vehicles parked in violation of county law,⁹ it does not confer authority on the County to regulate parking and impound vehicles on state or municipal roads in the County.

Therefore, we believe that the most prudent way to proceed with implementing that authority is by way of a memorandum of understanding or agreement between the County and the State Highway Administration.

3. Municipal Roads

Historically, counties have not had authority over roads within municipalities and this principle continues statutorily in non-charter counties. Md. Code Ann. Article 25, §2. Conversion to the charter form of government does not seem to have changed this relationship. Sections 25-102(a)(1) and 26-301 of the Transportation Article (Md. Code Ann.) give a municipality the authority to regulate parking on its own roads. Article 23A, § 2B (Md. Code Ann.) generally provides that a County law does not apply within a municipality where the municipality has concurrent authority unless the municipality allows the County law to apply. *See also*, Montgomery County Code, section 1-203. For example, Gaithersburg, Rockville and some others have provided that Chapter 31 of the County Code applies in those jurisdictions. Others have not. *See e.g.* Garrett Park.

We recommend that DPWT contact each municipality to determine if section 31-8 and 31-9 apply and if so, whether the municipality would object to the County implementing the roadside assistance program on municipal roads. If a municipality has not made Chapter 31 apply within its jurisdiction, then the County must ask it to give its authority to implement the program by legislation or MOU.

C. DPWT May Operate a Roadside Assistance Program Similar to the MSHA without the need for Additional Legislation.

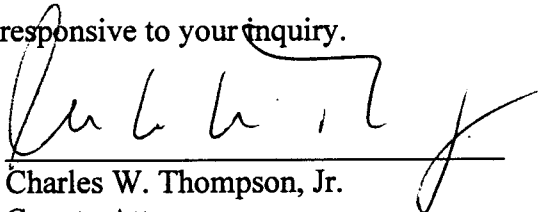
Because County law currently permits the County Executive to grant authority to “other authorized persons,” to impound disabled vehicles, we believe that no additional legislation is required.

⁹The General Assembly has adopted scant parking laws, *see*, Md. Code Ann. [Transportation] §§21-1001–1007.

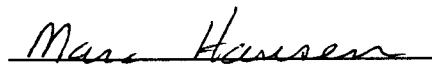
CONCLUSION

In sum, it is our opinion that because of its specificity and exclusivity, Executive Regulation 9-97 authorizing and implementing Police Department towing regulations may not be used by the Department of Public Works and Transportation as part of a motorist assistance program. Further, it is our opinion that the County may create a roadside assistance program without additional legislation, but would need an Executive Order that designates who other than the police may impound vehicles. Finally, it is our opinion that the County may adopt programs such as the roadside assistance program and to perform such functions of that program as they deem appropriate on State-owned highways and on highways within a municipality, if first authorized by a memorandum of understanding or legislation; or, in the case of municipalities, if Chapter 31 applies within its jurisdiction or the program is authorized by a memorandum of understanding.

We trust that you will find this letter responsive to your inquiry.



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